

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

 PLAINTIFF,

 vs.

 JAMES VERL BARLOW,

 DEFENDANT.

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) CASE NO. 2:21-cr-89
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TRANSCRIPT OF **PLEA** PROCEEDINGS
VIA VIDEOCONFERENCE
BEFORE THE HONORABLE SARAH D. MORRISON
TUESDAY, NOVEMBER 23, 2021; 3:21 P.M.
COLUMBUS, OHIO

FOR THE PLAINTIFF:
Kenneth L. Parker
United States Attorney
By: MICHAEL J. HUNTER
ASSISTANT UNITED STATES ATTORNEY
303 Marconi Boulevard, 2nd Floor
Columbus, Ohio 43215

FOR THE DEFENDANT JAMES BARLOW:
Brown Mishler PLLC
By: CHRISTOPHER S. MISHLER, ESQ.
911 North Buffalo Drive, Suite 202
Las Vegas, Nevada 89128

Brunner Quinn
By: STEVEN M. BROWN, ESQ.
5664 Montridge Lane
Dublin, Ohio 43016

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Allison A. Kimmel, FAPR, RDR, CRR, CRC
Federal Official Court Reporter
85 Marconi Boulevard
Columbus, Ohio 43215
614.719.3225

Tuesday Afternoon Session

November 23, 2021

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(The following proceeding was held in open court via
videoconference.)

THE COURT: All right. Ms. Bragg, will you please
call the case.

DEPUTY CLERK: United States of America versus James
V. Barlow, Case No. 2:21-cr-89-1.

THE COURT: Thank you. If counsel will please enter
their appearances, starting with counsel for the government.

MR. HUNTER: Good afternoon, Your Honor.
Michael Hunter on behalf of the United States.

THE COURT: Thank you.

MR. MISHLER: Good afternoon, Your Honor.
Christopher Mishler appearing on behalf of Mr. Barlow who is
present by video and in custody.

THE COURT: Thank you. I see Mr. Brown as well. Good
afternoon, Mr. Barlow.

THE DEFENDANT: Good afternoon, Your Honor.

THE COURT: Can you see both me and all the lawyers on
your video screen?

THE DEFENDANT: Yes, I can, Your Honor.

THE COURT: Can you also hear all of us?

THE DEFENDANT: Yes, I can, Your Honor.

1 THE COURT: So do you agree to proceed by video
2 conference this afternoon?

3 THE DEFENDANT: I do agree.

4 THE COURT: In light of Mr. Barlow's agreement and
5 pursuant to the Court's general order, I do find it's in the
6 interests of justice that we proceed by video conference.

7 With that said, Mr. Barlow, if we lose you, if for some
8 reason the technology stops working, we will stop the
9 proceedings because it is important that you are able to see
10 and hear and fully participate in the proceedings.

11 Mr. Hunter, what is the status of this case?

12 MR. HUNTER: Your Honor, the United States has filed a
13 Superseding Information in this case which charges the
14 defendant with conspiracy to possess with intent to distribute
15 a controlled substance analogue, in this case, an analogue of
16 psychedelic mushrooms, which are a Schedule I controlled
17 substance.

18 The Superseding Information also adds a count for
19 conspiracy to commit money laundering, as well as a forfeiture
20 provision in the count, which seeks the forfeiture of
21 cryptocurrency, account information, real property, and other
22 property as drug proceeds and profits in this case.

23 We are before the Court this afternoon -- I'm sorry --
24 at the same time we filed that Superseding Information, we also
25 filed a plea agreement by which the defendant agrees to plead

1 guilty to both counts charged in the Superseding Information
2 and consents to the forfeiture.

3 We're before the Court this afternoon for the defendant
4 to waive his right to the presentment of these new charges to
5 the grand jury and to enter a guilty plea pursuant to the plea
6 agreement filed with the Court.

7 THE COURT: Okay. And just so for my edification, the
8 Superseding Information is only as to Mr. Barlow. And to the
9 extent there are co-defendants, the original Indictment is
10 still in place for all of those defendants; is that right?

11 MR. HUNTER: That is correct, Your Honor.

12 THE COURT: Okay. So, Mr. Barlow, is that correct?
13 Do you wish to withdraw your previously entered plea of not
14 guilty -- because you did enter a plea of not guilty to the
15 original Indictment -- and now enter a plea of guilty to the
16 two counts of the Superseding Information?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: You know, do I need to do a waiver for
19 him, Mr. Hunter, of the right to the Indictment since we're
20 proceeding on the Information?

21 MR. HUNTER: I believe he would have to waive
22 Indictment on the new charges. Yes, Your Honor.

23 THE COURT: I think you are right. Let me -- I
24 apologize, Mr. Barlow.

25 Give me just a minute so I can pull up -- because

1 there's some specific questions I need to ask you about an
2 Information as opposed to an Indictment.

3 Okay. Thank you, Mr. Barlow.

4 So what Mr. Hunter just indicated and what we're talking
5 about is a Superseding Information, and so an Information is a
6 charging document by the United States Attorney, and in this
7 case the Superseding Information does charge you with two
8 counts.

9 Did you receive a copy of the Information?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And did you get a chance to review the
12 charges in that document?

13 THE DEFENDANT: I did.

14 THE COURT: Did you also have an opportunity to talk
15 about it with your attorneys?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Do you understand what's charged against
18 you in the Information?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Okay. Mr. Mishler, on behalf of
21 Mr. Barlow, do you want to waive a formal reading of the
22 Information?

23 MR. MISHLER: Yes, please, Your Honor.

24 THE COURT: Okay. So, Mr. Barlow, we're talking about
25 this charging document as an Information. That is only a

1 charge by the United States Attorney.

2 You have a constitutional right to be charged by an
3 Indictment of the grand jury, and this is not an Indictment by
4 the grand jury. It's only a charge of the United States
5 Attorney.

6 You can give up your right to an Indictment and agree to
7 be charged by the Information. But unless you agree to give up
8 your right to an Indictment, you cannot be charged with a
9 felony offense unless the grand jury finds by a return of the
10 Indictment that there is probable cause to believe that a
11 federal crime has been committed and also probable cause to
12 believe that you are the one that committed it.

13 If you decided not to give up your right to Indictment,
14 the government could present your case to the grand jury and
15 ask that it indict you.

16 A grand jury is made up of between 16 and 23 people, and
17 at least 12 of those people would have to agree that there is
18 probable cause to believe that you committed this offense
19 before an Indictment could be returned against you.

20 If the government presented your case to the grand jury,
21 the grand jury might or it might not indict you. But if you
22 decide to give up your right to an Indictment and agree to be
23 charged by the Information, the case will proceed against you
24 on the Information just as if the grand jury had in fact
25 indicted you on these two charges.

1 Do you understand you have a constitutional right to an
2 Indictment by a grand jury?

3 THE DEFENDANT: Yes, I understand that one,
4 Your Honor.

5 THE COURT: And do you -- did you discuss giving up
6 your right to an Indictment on these superseding charges to
7 your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anybody made any threats or promises
10 to you to try to convince you to give up your right to an
11 Indictment by the grand jury?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Do you want to give up your right to
14 Indictment and agree to be charged by this Superseding
15 Information?

16 THE DEFENDANT: I agree to be charged by the
17 Superseding Information, Your Honor.

18 THE COURT: Mr. Mishler, are you aware of any reason
19 why Mr. Barlow should not give up his right to an Indictment?

20 MR. MISHLER: No, Your Honor.

21 THE COURT: Okay. In light of the discussion, I do
22 accept, Mr. Barlow, your waiver of a right to an Indictment,
23 and the case will proceed against you on the Superseding
24 Information by the United States Attorney.

25 So now that we have the right charging document in front

1 of us, is that right, that you do want to enter a plea of not
2 guilty to the two -- excuse me -- enter a plea of guilty to the
3 two counts of the Superseding Information?

4 THE DEFENDANT: I will plead guilty to the two counts,
5 Your Honor.

6 THE COURT: Okay. Well, before I accept your plea of
7 guilty, I do have to determine that your plea is made knowingly
8 and voluntarily, with an understanding of the nature of the
9 charges against you as well as the consequences of your plea.

10 I don't have to accept your guilty plea unless I'm
11 satisfied of your guilt and also satisfied that you fully
12 understand all of your rights.

13 So in order to make this determination, I do have to ask
14 you several questions this afternoon.

15 We'll begin by placing you under oath. So if you will
16 raise your right hand.

17 DEPUTY CLERK: You do solemnly swear that the answers
18 given to the questions propounded to you in this proceeding
19 shall be the truth, the whole truth, and nothing but the truth
20 as you shall answer unto God.

21 If you so swear, please say I do.

22 THE DEFENDANT: I do.

23 THE COURT: Thank you. You may put your hand down.

24 Do you understand that you are now under oath and so if
25 you give false answers to any of my questions you can be

1 charged with perjury or with making a false statement?

2 THE DEFENDANT: I understand, Your Honor.

3 THE COURT: Okay. Will you tell me your full name
4 please.

5 THE DEFENDANT: James Verl Barlow.

6 THE COURT: How old are you?

7 THE DEFENDANT: I am 45.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: I have a bachelor's of science in
10 French, I doubled in computer science, and multiple degrees
11 through the military or multiple military -- military
12 occupational specialties.

13 THE COURT: What branch of the military were you in?

14 THE DEFENDANT: Army for 25 years, Your Honor. I just
15 retired in 2019.

16 THE COURT: Very good for you. Thank you for your
17 service.

18 Have you been able to communicate with your attorneys in
19 preparation for the hearing today?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: Have you ever been treated for a mental
22 illness or for an addiction?

23 THE DEFENDANT: No, I have not, Your Honor.

24 THE COURT: Have you taken any narcotic drugs,
25 medicine or pills, or drunk any alcoholic beverages in the last

1 24 hours?

2 THE DEFENDANT: No, I've not, Your Honor.

3 THE COURT: So -- it's always an easier question when
4 the defendants are in custody than when they are not, so good
5 answer.

6 Mr. Mishler, do you have any doubt as to Mr. Barlow's
7 competence to plead at this time?

8 MR. MISHLER: I have no concerns, Your Honor.

9 THE COURT: And did you have a sufficient opportunity
10 to confer with him in preparation for the hearing today?

11 MR. MISHLER: Yes, Your Honor, I did.

12 THE COURT: And I know, Mr. Mishler, you did a moment
13 ago waive the right to a reading of the Superseding
14 Information.

15 Is that still the same for the portion of the hearing on
16 the plea?

17 MR. MISHLER: Yes, Your Honor, it is.

18 THE COURT: Okay. So, Mr. Barlow, I know we talked --
19 I've asked you this question before, but I do need to repeat
20 it.

21 With regard to the Superseding Information, did you
22 review that Superseding Information and fully discuss the
23 charges with your lawyer?

24 THE DEFENDANT: Yes, I did.

25 THE COURT: Okay. Are you fully satisfied with the

1 advice and representation that your lawyers have given you in
2 this case?

3 THE DEFENDANT: Affirmative.

4 THE COURT: I'm sorry? You said what? Affirmative.
5 Okay. Thank you. So we're talking about the Superseding
6 Information, and it does charge you with two counts.

7 Count 1 charges you with conspiracy to possess with
8 intent to distribute controlled substances, and Count 2 charges
9 you with conspiracy to commit money laundering.

10 So with regard to those two charges, the government
11 would have to prove certain facts or elements before a jury
12 could find you guilty beyond a reasonable doubt.

13 The elements of the charges against you are -- and I'm
14 going to read them to you, they are in the plea agreement
15 itself, but I'm going to read them to you for the record.

16 For Count 1, the conspiracy to distribute and to possess
17 with intent to distribute a controlled substance, the elements
18 of that are, first, that you agreed to violate federal drug
19 laws with one or more persons; second, that you had knowledge
20 of and intended to join the conspiracy; third, that you
21 participated in the conspiracy; fourth, that the conspiracy
22 involved the possession with the intent to distribute a
23 detectable amount of a controlled substance analogue commonly
24 known as psychedelic mushrooms, a Schedule I controlled
25 substance. The fifth element is that the conspiracy existed at

1 or around the time alleged in the Superseding Information in
2 the Southern District of Ohio and elsewhere.

3 As to Count 2, which is the conspiracy to commit money
4 laundering, the elements are, first, that you conspired with at
5 least one other person to commit the crime of money laundering;
6 second, that you knowingly and voluntarily joined the
7 conspiracy; and then the third element is also that that
8 conspiracy existed at or around the time alleged in the
9 Southern District of Ohio and elsewhere.

10 Do you understand that those are things that the
11 government would have to prove beyond a reasonable doubt before
12 you could be convicted on those two charges?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: So proper plea agreements are allowed, and
15 you and all counsel do have a duty to disclose the existence
16 and all of the terms of any such agreement.

17 The plea agreement that you entered into with counsel
18 for the government has been given to me, and I have reviewed
19 it, but I'm going to now have Mr. Hunter provide a summary of
20 the plea agreement for the record.

21 Mr. Hunter, would you provide that summary, please.

22 MR. HUNTER: Yes, Your Honor. Thank you.

23 Your Honor, in the Superseding Information, which is
24 filed with the Court, the defendant again agrees to plead
25 guilty to Count 1 which charges conspiracy to possess with

1 intent to distribute a controlled substance, in this case an
2 analogue of a controlled -- Schedule I controlled substance,
3 and that is psychedelic mushrooms.

4 In Count 2, he agrees to plead guilty to conspiracy to
5 commit money laundering.

6 In this plea agreement, the defendant acknowledges the
7 essential elements of the offenses, and those are the same
8 elements that the Court has just gone over with him.

9 The defendant also acknowledges the possible penalties
10 that he faces in this case. And that is, for Count 1, a term
11 of imprisonment of up to 20 years; a term of supervised release
12 from a mandatory minimum of three years up to life; a fine not
13 to exceed \$1 million; and a mandatory special assessment of
14 \$100.

15 The potential penalties for Count 2 are, again, a term
16 of imprisonment not to exceed 20 years; a term of supervised
17 release of up to three years; a fine not to exceed \$500,000 or
18 twice the value of the property involved in the transactions,
19 whichever is greater; and then, again, a mandatory special
20 assessment of \$100.

21 So that would be a total of special assessments of \$200
22 in this case.

23 The defendant acknowledges that he has several trial
24 rights, which includes the right to plead not guilty, to have a
25 trial by jury, to be assisted by counsel during such trial, to

1 confront and cross-examine adverse witnesses, to testify if he
2 desires, and to present evidence and compel the attendance of
3 witnesses on his behalf.

4 He also has the right to not be compelled to testify or
5 present any evidence and to not have those decisions held
6 against him.

7 And, of course, he has the right to be presumed innocent
8 throughout the trial and unless and until a jury finds proof of
9 guilt beyond a reasonable doubt.

10 In this plea agreement, Mr. Barlow acknowledges that if
11 the Court accepts his plea of guilty pursuant to the plea
12 agreement, there will be no trial and he will effectively waive
13 those rights.

14 The defendant acknowledges that, in determining a
15 sentence, the Court has an obligation to calculate the
16 applicable sentencing guideline range and to consider not only
17 that range but any possible departures under both the
18 sentencing guidelines and federal law.

19 The parties have agreed to a Statement of Facts. It is
20 set forth in this agreement as Attachment A.

21 The parties agree to recommend to the Court that the
22 Statement of Facts provides a factual basis for Mr. Barlow's
23 plea of guilty.

24 The parties also agree to make several recommendations
25 to the Court regarding the application of the sentencing

1 guidelines. These are contained in Paragraph 7.

2 The parties agree to recommend that the relevant conduct
3 in this case consists of a converted drug weight of
4 639 kilograms of psychedelic mushroom analogue, which falls
5 into a range of greater than 400 kilos but less than 700 kilos
6 of converted drug weight. That should result in an Offense
7 Level of 26.

8 The parties also agree that pursuant to guideline
9 2S1.1(b)(2)(B), the Offense Level for Count 1 should be
10 increased by two levels because this defendant by pleading
11 guilty will have been convicted of 18 United States Code 1956.

12 The parties also agree to recommend that the relevant
13 conduct on the date of the defendant's arrest as a result of
14 the property and proceeds derived and obtained as a result of
15 both the convictions in Count 1 and Count 2 consists of
16 approximately \$12 million -- between \$12 million and
17 \$15 million in assets, currency, and property, which pursuant
18 to guideline 2S1.1 and 2B1.1(b)(1)(k) is more than 900 --
19 excuse me -- more than nine million five hundred [sic] but less
20 than 25 million, and that corresponds to an Offense Level of
21 28.

22 The parties do recommend to the District Court that any
23 sentences for Counts 1 and 2 be run concurrent with one
24 another.

25 The parties also agree that pursuant to guideline 3B1.1,

1 the Offense Level for Count 1 and Count 2 should be increased
2 by four levels because this defendant was an organizer or
3 leader of criminal activity that involved five or more
4 participants.

5 The United States in this agreement does not oppose,
6 essentially, a three-level reduction in the defendant's Offense
7 Level for the defendant's acceptance of responsibility,
8 provided he continues to accept of responsibility through the
9 time of sentencing.

10 Your Honor, there is a fairly lengthy forfeiture
11 provision in this plea agreement. That's contained in
12 Paragraphs 9 and 10.

13 Essentially, the defendant consents to the forfeiture
14 charged in Forfeiture A of the Superseding Information.

15 He agrees not to contest that forfeiture and to go along
16 with any proceedings to accomplish that forfeiture.

17 I will say, and I will comment a little bit more on this
18 once we have talked, Your Honor, that there is going to be a
19 process in this case by which the defendant is entitled to --
20 when we come up with an initial order of forfeiture, for me to
21 confer with his counsel and see if we have agreement on that.
22 And if we don't have agreement on that, we may come back to the
23 Court with an amended order.

24 And there is a possibility in this case that there may
25 be -- it may require a hearing for some factual findings to be

1 made in support of an innocent owner defense as well as that
2 some of the alleged cryptocurrency in this case was prior to
3 the drug trafficking conspiracy.

4 THE COURT: Okay.

5 MR. HUNTER: So we set all of that forth in the plea
6 agreement, and then we have agreed in these plea negotiations
7 that we would leave those avenues open for Mr. Barlow. So I
8 just wanted to bring that to the Court's attention.

9 THE COURT: Thank you.

10 MR. HUNTER: The United States in this plea agreement
11 agrees not to further prosecute the defendant for conduct prior
12 to the date of the plea agreement that was, quote, part of the
13 same course of criminal conduct in the Superseding Information.

14 Both parties acknowledge that this agreement does not
15 bind other state, local, or federal prosecutions.

16 This plea agreement does contain an appellate waiver.
17 It's contained in Paragraph 13.

18 In exchange for the concessions made by the government
19 in this plea agreement, which include charging and sentencing
20 guideline concessions, this defendant waives the right to
21 appeal the conviction and sentence imposed unless those
22 sentences exceed the statutory maximum, which in this case is
23 more than 20 years on both counts.

24 The defendant also agrees to limit his right to
25 collaterally attack his conviction and sentence, agreeing to

1 limit such claims only to claims of ineffective assistance of
2 counsel and/or prosecutorial misconduct.

3 In this agreement, Mr. Barlow agrees that he is not a
4 prevailing party as that has been defined by federal law, and
5 he waives any rights to sue the United States in this
6 agreement.

7 He also waives any rights he may have under the
8 Freedom of Information Act to make claims and requests for
9 documents related to his prosecution.

10 The defendant acknowledges that this Court is not bound
11 by any of these sentencing recommendations and stipulations of
12 the parties. And, of course, it's within the sole discretion
13 of the District Court to impose the sentence in this case.

14 This defendant agrees to abide by the terms of the
15 agreement. He acknowledges that if he violates the agreement
16 the United States would be relieved of any of its -- any and
17 all of its obligations and could institute both charges or
18 recommendations that would have otherwise been prohibited by
19 the agreement.

20 He also acknowledges that he would not be relieved of
21 his obligations.

22 The defendant also acknowledges that, if he violates the
23 agreement or it's voided, he would waive any defenses he may
24 have based upon the statute of limitations and the Speedy Trial
25 Act.

1 The defendant acknowledges that he has read and
2 understands the plea agreement; that he accepts it knowingly
3 and voluntarily, not as a result of any force, threats, or
4 promises, other than the promises contained in the plea
5 agreement; that he has conferred with his attorney regarding
6 this plea agreement, the facts and circumstances of his case,
7 including the applicable law and any potential offenses, and
8 acknowledges that he is fully satisfied with the
9 representation, advice, or assistance -- and assistance of his
10 attorney in this case.

11 Your Honor, this is the complete agreement, along with
12 any other attachments to the agreement, between the parties.
13 It supersedes any other promises, representations,
14 understandings, or agreements.

15 I would point the Court's attention to the fact that on
16 page 5 and page 6 of this plea agreement it is signed by
17 Mr. Barlow and by Mr. Mishler.

18 And I would lastly turn the Court's attention to page 8,
19 which is Attachment A of the plea agreement. That is the
20 Statement of Facts the United States represents would establish
21 the defendant's guilt -- the essential facts that would
22 establish his guilt had this matter proceeded to trial.

23 And, again, I would note on page 9 of the plea
24 agreement, it is signed by Mr. Barlow and Mr. Mishler.

25 THE COURT: Thank you, Mr. Hunter.

1 Mr. Mishler, is that your understanding of the plea
2 agreement?

3 MR. MISHLER: It is, Your Honor, and I do appreciate
4 Mr. Hunter bringing to light the possible forfeiture issues to
5 the Court's attention, so that I don't have to.

6 There is one issue that I have discussed with
7 Mr. Hunter, and I want to bring it to the Court's attention as
8 to regarding the amount of money laundering alleged in
9 Paragraph 7, Section C, of the plea agreement.

10 While the government maintains that the amount at issue
11 is between 12 and 15 million dollars, my client maintains that
12 that number is more realistically in the realm of four, four
13 and a half million, which would result in a lower guideline
14 range.

15 But since that count would be subsumed under a
16 concurrent sentence, we're prepared to proceed with the
17 sentencing as -- the plea agreement as it is laid out right
18 now, Your Honor.

19 THE COURT: Okay. So would it be your expectation,
20 Mr. Mishler, that at sentencing you'll want to address it, but
21 at least for purposes of the plea agreement, you are
22 recommending that the -- that the result of the property and
23 proceeds is between 12 and 15 million dollars, right?

24 MR. MISHLER: That's correct, Your Honor. This would
25 really only be an issue at sentencing. I just didn't want to

1 surprise the Court with it at that time.

2 THE COURT: Okay. No. I appreciate it.

3 And so -- so I think -- and please correct me if I'm
4 wrong, it would be your expectation that at least for purposes
5 of the -- for the calculation of the guideline range, you are
6 agreeing to the -- what you are saying is you are agreeing to
7 the recommendation because it's the -- at least the Base
8 Offense Level for Count 1 is lower than the Base Offense Level
9 for Count 2, and the recommendation is they run concurrently.

10 But for purposes of the 3553(a) factors, you want to be
11 able to argue what the proceeds are?

12 MR. MISHLER: That's correct, Your Honor.

13 And my understanding is that the two counts would --
14 with the two levels added for a conviction for money
15 laundering -- they result in the exact same guideline level
16 anyway.

17 THE COURT: Okay. It seems like it likely would. But
18 until I see the presentence report, I just -- you don't know.

19 Okay. I mean, I'm fine with that record.

20 Mr. Hunter, do you want to respond to that at all or --

21 MR. HUNTER: Only to explain to the Court that the
22 United States' position is that, as we stand right now, that's
23 what the evidence supports, is that guideline range.

24 There is going to be a process where we come out with a
25 preliminary order of forfeiture for the defendant to make

1 arguments to the contrary, and so I believe all of that will be
2 done in time for the Court to have all the facts before it,
3 before it needs to make any determination as to the sentencing
4 guideline range.

5 THE COURT: Oh, okay. So that kind of -- that factual
6 dispute will actually come up even before sentencing because it
7 will be addressed at least in part under the forfeiture
8 process?

9 MR. HUNTER: That is our expectation, Your Honor.
10 Yes.

11 THE COURT: Okay. Thank you, Mr. Mishler.

12 Anything else on that point then or anything else with
13 regard to the plea agreement?

14 MR. MISHLER: No, Your Honor. Other than that, that
15 is my complete understanding.

16 THE COURT: Okay. And, Mr. Barlow, I know we've had
17 some back-and-forth, but that -- the summary that Mr. Hunter
18 gave and then the discussion that we just had, is that your
19 understanding of the plea agreement as well?

20 THE DEFENDANT: That's my understanding.

21 THE COURT: Okay. And, in fact, you signed the plea
22 agreement; is that right?

23 THE DEFENDANT: I did sign it, Your Honor.

24 THE COURT: Did you read it before you signed?

25 THE DEFENDANT: Yes, I did, very carefully.

1 THE COURT: Okay. Good. And then you also talked to
2 your attorneys about it before you signed it?

3 THE DEFENDANT: Correct, I did. And that's when we
4 brought up the -- the difficulty -- the difference in the money
5 laundering amounts which Mr. Hunter spoke about.

6 THE COURT: Okay. And so, yeah, what the plea --
7 because you know, but it bears repeating, what the plea
8 agreement is -- it's recommending this particular dollar amount
9 for the proceeds from the drug sales, the drug conspiracy.

10 That's going to be used as the basis for the guideline
11 calculations, and we'll talk more about that in a minute. And
12 it sounds like the parties are in agreement that you are still
13 reserving your right.

14 To the extent that I look at the relevant conduct, you
15 are reserving the right to say, well, the relevant conduct that
16 I should consider after the guideline range has been calculated
17 is actually less proceeds.

18 Do you understand that?

19 THE DEFENDANT: Say that last part again.

20 THE COURT: I don't know if I can. So, basically,
21 yeah, it's a little bit different in terms of what I normally
22 see.

23 So let me make sure that I am on the same page with you,
24 Mr. Barlow, and that is -- so what the plea agreement says is
25 that when the Court looks at -- when the Court calculates the

1 guideline range -- and I'll talk for a moment what that means,
2 but when the Court calculates the guideline range, that
3 everybody is in agreement. That for purposes of that, you plug
4 in some numbers to figure out what the applicable guideline
5 range is.

6 And for that purpose only, you do -- you agree for that
7 limited purpose -- my glasses just broke -- that the proceeds
8 from the drug conspiracy are between 12 and 15 million dollars,
9 but -- but you are reserving the right with regard to the
10 proceeds from the drug conspiracy for other purposes to say,
11 no, no, no, it wasn't -- the range wasn't 12 to 15 million
12 dollars. It was something significantly less than that.

13 Is that your understanding?

14 THE DEFENDANT: Yeah. My understanding is that, for
15 the drug conspiracy, it was the amount of -- of narcotics
16 seized that are the guidelines for that -- for the drug
17 charges, but the money is for the -- the money amount is for
18 money laundering charges.

19 And so, since these are going to be served concurrently,
20 and even if it was -- if it were \$12 million, that Offense
21 Level ends up being slightly less than the Offense Level for
22 the drug conspiracy itself.

23 And since the -- the money laundering, even if it is
24 this high amount, it would be swallowed up by the drug
25 conspiracy charges.

1 I'm fine with accepting that right now. Just -- I mean,
2 there is -- there's the personal part. I don't want to be
3 pleading guilty for things that I don't think are -- are
4 accurate.

5 However, my understanding is -- is if it was down to the
6 corrected amount, which is -- I maintain is between four and
7 four and a half million dollars, 4.3 million exactly, I -- even
8 if that was conceded by -- by Mr. Hunter, my sentencing time
9 would not change because the conspiracy charges still have a
10 higher Offense Level.

11 That's my understanding, Your Honor.

12 THE COURT: Well, I guess my only question -- and if
13 the lawyers want to correct me -- is, at least as I read the
14 plea agreement, it is not necessarily an admission.

15 It is a recommendation that the proceeds derived -- and
16 this, though, does say the proceeds derived as a result of the
17 violations in Count 1 and Count 2 of the information is between
18 12 and 15 million dollars.

19 I don't read that as an admission, although I do read
20 that as a recommendation, including as to Count 1.

21 MR. HUNTER: Your Honor, the Court's understanding is
22 right.

23 The United States' position is: That's what the parties
24 are agreeing to right now because that's what the evidence
25 supports.

1 I expect that in the coming months Mr. Barlow, through
2 Mr. Mishler, is going to provide evidence that that number is
3 lower.

4 If I receive that, then that would be information we
5 would put in front of the Court. That would change the
6 guideline calculation. It would also change potentially the
7 forfeiture so that there would be an amended order of
8 forfeiture.

9 I don't believe it is material as to guilt or innocence.
10 It is "that's where the evidence supports right now," but we're
11 leaving the avenue for Mr. Barlow to present mitigating
12 evidence.

13 THE COURT: Okay. And -- and as I look at the
14 Statement of Facts, again, going back to what -- to the
15 admission and the guilty conduct, the facts to which Mr. Barlow
16 is agreeing, it does not include the -- any information on the
17 proceeds derived.

18 MR. HUNTER: That is correct.

19 THE COURT: Am I reading that correct, Mr. Mishler?

20 MR. HUNTER: We're not trying to lock him into any
21 factual statements on that issue.

22 THE COURT: Okay.

23 MR. HUNTER: So we're setting forth the elements of
24 the offense, and we're leaving an avenue for Mr. Barlow to
25 argue about the dollar amounts.

1 THE COURT: Okay. Okay. That's helpful.

2 Mr. Mishler, do you want to add anything else?

3 MR. MISHLER: I just apologize that we've made this as
4 confusing as we did, Your Honor.

5 It was the result of a lot of negotiations back and
6 forth, and this seemed the cleanest way to present it to you.

7 THE COURT: No, no. Seriously, nothing to apologize
8 for. I just want to make sure that I understand it, and I want
9 to make sure that as I -- what I understand Mr. Barlow to have
10 agreed to, from what his comments are to me, that we're all on
11 the same page, and I'm satisfied that we are.

12 Mr. Barlow, are you satisfied as well that we're all on
13 the same page?

14 And in particular, you know, my last questions, just to
15 be clear, and I'll get to the Statement of Facts in a few
16 minutes, but in the Statement of Facts, I am going to ask you
17 about -- in that, you are not agreeing at this point today to a
18 particular dollar amount of proceeds, really from either
19 Count 1 or for Count 2.

20 So with that clarification, all of this discussion and
21 the substance of the plea agreement, is that what you
22 understand that you agreed to?

23 THE DEFENDANT: Correct.

24 THE COURT: Okay.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: Thank you for your patience as I make sure
2 I understand, too, what -- what exactly your agreement is so
3 that we can make sure it gets effectuated.

4 So then with that, Mr. Barlow, do you understand that
5 any agreement regarding a sentence to be recommended to the
6 Court is not binding on me, so that if I decline to follow your
7 agreement and impose a higher sentence, you cannot withdraw
8 your guilty plea simply because you do not like the sentence
9 that I impose?

10 THE DEFENDANT: I understand, Your Honor.

11 THE COURT: Okay. Has anyone, including an officer on
12 an agent of the government, made any promise to you other than
13 the plea agreement itself to convince you to plead guilty?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Has anybody tried to force you to plead
16 guilty?

17 THE DEFENDANT: No.

18 THE COURT: Do you understand that the offense to
19 which you are pleading guilty is a felony offense, so that if I
20 accept your plea, you will be adjudged guilty of that felony,
21 or both felonies, and such adjudication may deprive you of
22 valuable civil rights, which include the right to vote, to hold
23 public office, to serve on a jury, and the right to possess any
24 kind of firearm in the future?

25 THE DEFENDANT: Yes. It -- it sucks, but I -- I

1 understand, especially after all this.

2 THE COURT: It is -- the consequences of a felony are
3 very serious, so -- but you are aware of those consequences?

4 THE DEFENDANT: I am aware, Your Honor.

5 THE COURT: Okay. The potential penalty in your case
6 includes -- and this is what's set forth in federal law --
7 for -- really for both counts, a term of imprisonment for up to
8 20 years.

9 For Count 1, a term of supervised release of three years
10 to life, with a fine not to exceed a million dollars.

11 And on Count 2, a term of supervised release of up to
12 three years, and a fine not to exceed \$500,000 or twice the
13 value of the property involved in the transactions, whichever
14 is greater.

15 And then for both of the counts, combined, there would
16 be a mandatory special assessment of \$200, which will be due
17 prior to sentencing.

18 Do you understand that those are the statutory penalties
19 for the offenses?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You should also know, Mr. Barlow, that
22 there's no parole. So you must serve the full amount of any
23 prison term to which you are sentenced.

24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: So following the service of your sentence,
2 you will be required to serve a term of supervised release.

3 Supervised release is a period of supervision by the
4 probation office, and there are strict terms and conditions
5 during that period.

6 If you violate the conditions of supervised release,
7 your release can be revoked and you can be sentenced to an
8 additional term of imprisonment for up to the full term of
9 supervised release, without credit for time already served on
10 the period of supervised release and also without credit for
11 time already served in prison.

12 Do you understand that?

13 THE DEFENDANT: Is supervised release is release
14 pending sentencing or is supervised release at the end of the
15 sentence?

16 THE COURT: At the end of the sentence. Yeah. It's a
17 hard concept if you haven't been in the criminal justice system
18 before. So, yes.

19 So what -- how it works in federal court is you would
20 be -- if you are sentenced to a period of incarceration, after
21 that period of incarceration is over, at some -- in state
22 court, sometimes they call it community control. We call it
23 supervised release.

24 So in the federal system, after your period of -- any
25 period of incarceration, it's a period of supervised release.

1 And there are strict terms and conditions such as, you
2 know, you might have to have regular drug tests. You'll have
3 to be working or trying to find a job and different things.

4 Sometimes it's you have to be in mental health
5 treatment. And if you are not complying with those terms, the
6 probation officer will petition the judge and say, "Hey, this
7 defendant is not in compliance with his terms, and, you know,
8 what are we going to do about it?"

9 And if I find as the trial judge that your violations of
10 the terms of supervised release are serious enough, I can
11 impose -- I can require you to go back to prison for the full
12 term of supervised release, without credit for your time
13 already served in prison and also without credit for the time
14 served on supervised release.

15 Do you understand that?

16 THE DEFENDANT: That, I do. I think the other inmates
17 explained it to me as they call it "time on the shelf."

18 THE COURT: Yeah. That's probably a good description.
19 I've not heard it called that.

20 THE DEFENDANT: And if you -- essentially, as you
21 said, not parole, but violate parole or violate those
22 conditions, that the time on the shelf comes back and bites you
23 in the keister.

24 THE COURT: Yes, exactly. And so -- and I know we're
25 going to talk before we're done today, but after we're done

1 taking your plea, I know we're going to talk -- your attorney
2 did file a motion to have you released before sentencing, and
3 so that's pretrial release.

4 So there's really kind of what I would call three
5 phrases. One is pretrial release. And we're going to talk
6 about that for you in a few moments.

7 And then after sentencing, if there is a period of
8 incarceration, that would be in the middle. And then at the
9 end is this supervised release or probation if you don't get
10 incarceration.

11 And the pretrial release period and the supervised
12 release period are, frankly, very similar. You are just
13 reporting to a different office.

14 Does that make sense?

15 THE DEFENDANT: Okay.

16 THE COURT: Okay.

17 THE DEFENDANT: Understood.

18 THE COURT: I've never heard it called the time-out
19 shelf, but I might use that again. So thank you for that term.

20 So do you also understand, Mr. Barlow, that you may be
21 ordered to make restitution, which is a monetary payment, if
22 there are any identified victims of the offense?

23 THE DEFENDANT: I've not heard that before, but it
24 makes sense to me.

25 THE COURT: Okay. Do you further understand that you

1 will be required to forfeit or turn over certain property to
2 the government that was either acquired with money from illegal
3 activities or was used in the commission of the offense?

4 THE DEFENDANT: Correct.

5 THE COURT: Do you understand all of these possible
6 consequences of your plea that I've just gone over?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And knowing the maximum penalties I can
9 impose and the possible consequences, do you still want to
10 plead guilty?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So the United States Sentencing Commission
13 has established guidelines for judges to follow to determine
14 the appropriate sentence in every case. These guidelines are
15 advisory, and they do provide guidance to me.

16 And these are the guidelines we were talking about
17 before in terms of you plug in certain factors, and it kind of
18 tells me how serious the Offense Level is, and it kind of looks
19 at some national numbers to know the seriousness of the
20 offense.

21 Did you and your attorney talk about the advisory
22 sentencing guidelines?

23 THE DEFENDANT: Yes, we have.

24 THE COURT: It sounded like you talked probably a lot
25 about it. In addition to those guidelines, there are certain

1 factors that are set forth in federal law that I also have to
2 consider when I determine your sentence, and really the
3 sentence in every case.

4 Those factors are the nature and circumstances of the
5 offense, together with the history and characteristics of the
6 defendant, the need for the sentence imposed to reflect the
7 seriousness of the offense, to promote respect for the law and
8 to provide just punishment for the offense, to afford adequate
9 deterrence to criminal conduct, to protect the public from
10 further crimes of the defendant, and to provide the defendant
11 with needed educational or vocational training, medical care,
12 or other correctional treatment in the most effective manner.

13 I also have to consider the need to avoid unwarranted
14 sentencing disparities and the need to provide restitution to
15 any victims of the offense.

16 Do you understand I'm going to consider all of these
17 factors when I determine your sentence?

18 THE DEFENDANT: Correct, Your Honor.

19 THE COURT: So before you are sentenced, a presentence
20 report will be prepared by the probation department. This
21 report will contain the probation officer's conclusion
22 regarding the applicable imprisonment range under the
23 guidelines. But, again, that range is only advisory and is not
24 binding on me.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: So once that report is prepared, you and
3 the government will have an opportunity to review it and then
4 to challenge any facts and conclusions contained in the report
5 if you want to.

6 I'm not going to determine your sentence until that
7 process is complete.

8 Also, I'm not bound by any stipulation or agreement
9 between you and the government as to any facts, conclusions, or
10 as to the sentence itself. I alone decide those matters.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you understand that any sentence
14 ultimately imposed may be different than any estimate your
15 attorney may have given you?

16 THE DEFENDANT: Yes, I understand that, Your Honor.

17 THE COURT: Do you understand that, after the
18 guideline range is determined, I do have the authority in some
19 circumstances to depart either up or down from that range, and
20 I'll also examine the other statutory factors that I just
21 talked about, and those factors could result in a sentence that
22 is either longer or shorter than the guideline range?

23 THE DEFENDANT: Yes, Your Honor.

24 I'll have my fingers crossed for lower, but I understand
25 it could be higher.

1 THE COURT: Okay. Do you understand that, if the
2 sentence is more severe than you expect, you are still going to
3 be bound by your plea and you'll have no right to withdraw it?

4 THE DEFENDANT: Yes, I do, Your Honor.

5 THE COURT: Do you understand, by entering into this
6 plea agreement and entering a plea of guilty, you will have
7 given up certain rights to appeal or to attack your conviction
8 and sentence?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So, Mr. Barlow, I do also advise you that
11 under the Constitution and laws of the United States you do
12 have the right to continue to plead not guilty.

13 You have the right to be tried by a jury. At such a
14 speedy and public trial, you would have the right to the
15 assistance of counsel, the right to confront and cross-examine
16 any witnesses that testify against you, the right not to be
17 compelled to incriminate yourself, and also the right to the
18 issuance of subpoenas or compulsory process to compel the
19 attendance of witnesses who could come and then testify in your
20 defense.

21 At such a trial, you would be presumed innocent until
22 such time, if ever, the government established your guilt by
23 competent evidence beyond a reasonable doubt.

24 Do you understand that if you plead guilty, and if I
25 accept your plea, there will be no trial because you will have

1 waived or given up your right to trial as well as the other
2 rights associated with trial that I just described?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that, if I accept your
5 plea, I can still impose the same penalty as though you pled
6 guilty, stood trial, and been convicted by a jury?

7 THE DEFENDANT: Yes.

8 THE COURT: If you plead guilty, do you understand
9 that you'll have to waive your right not to incriminate
10 yourself because I'm now going to ask you questions about what
11 you did in order to satisfy myself that you are guilty as
12 charged and you are going to have to acknowledge your guilt
13 here in court today?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. So we talked a few moments ago
16 about the plea agreement. And part of the plea agreement is
17 Attachment A, the Statement of Facts.

18 And what that does is, like I said, it makes no mention
19 of any specific proceeds other than -- it just -- I think when
20 you -- investigators at one point did find some money,
21 approximately \$50,000 in U.S. currency. That's the only
22 reference to any specific dollar amounts in the Statement of
23 Facts.

24 But the Statement of Facts talks about what you had been
25 doing, using the dark web market to distribute psychedelic

1 mushrooms, and how you handled the orders, and also your
2 efforts to conceal the proceeds and payments.

3 Did you read that Statement of Facts?

4 THE DEFENDANT: I did, Your Honor.

5 THE COURT: And, in fact, it appears to me that you
6 signed that Statement of Facts. Is that right? Did you sign
7 it?

8 THE DEFENDANT: I did, Your Honor.

9 THE COURT: Were those facts correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Did you see anything that was inaccurate
12 in the Statement of Facts?

13 THE DEFENDANT: No, I don't recall so.

14 THE COURT: Okay. Are you offering to plead guilty
15 here today because you are, in fact, guilty of Counts 1 and 2
16 as charged in the Superseding Information?

17 THE DEFENDANT: Yes to Count 1, Your Honor. I would
18 have thought -- now that Mr. Hunter has explained, that my
19 understanding of what my money laundering is was not at all
20 accurate.

21 So according to the government's definition, I did
22 commit money laundering, yes.

23 THE COURT: So I can understand what you just said,
24 basically what you are saying is -- but what you knew before
25 this case was filed, you didn't think you were committing money

1 laundering.

2 But now that Mr. Hunter as part of the plea agreement
3 has explained the elements, you understand that you are, in
4 fact, guilty of money laundering?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. Thank you. I just wanted to make
7 sure I understood your comment. Well, good.

8 In light of everything I've told you about your rights,
9 in light of all of my questions to you this afternoon, how do
10 you now plead to Counts 1 and 2, guilty or not guilty?

11 THE DEFENDANT: I plead guilty, Your Honor.

12 THE COURT: Okay. Thank you, Mr. Barlow.

13 I have observed the appearance and responsiveness of
14 Mr. Barlow in giving his answers to the questions that I've
15 asked.

16 I am satisfied that he is in full possession of his
17 faculties. He is not suffering from any apparent physical or
18 mental illness or under the influence of narcotics or alcohol.

19 Mr. Barlow is competent and understands the proceedings
20 in which he is engaged. He understands the nature and meaning
21 of the charges as well as the consequences of his plea of
22 guilty, and he is aware of the plea negotiations and the plea
23 agreement presented to the Court.

24 Therefore, I do find there is a sufficient factual basis
25 to accept the plea of guilty, and I find that his plea is made

1 voluntarily, with an understanding of the nature of the charges
2 as well as the consequences of his plea.

3 So I do accept the guilty plea and the plea agreement
4 and will enter a judgment of guilty to both counts.

5 The judgment and sentence imposed upon Mr. Barlow in
6 this case will conform to the terms of the plea agreement and
7 will be consistent with the sentencing framework as defined by
8 the United States Supreme Court in *U.S. versus Booker*.

9 So before we recess for that presentence report to be
10 prepared, as I alluded to earlier, Mr. Mishler, I know that
11 you've also filed a motion for pretrial release of Mr. Barlow.

12 Would you like to address the motion?

13 MR. MISHLER: Yes, Your Honor.

14 I was present at the initial detention hearing on behalf
15 of Mr. Barlow, so I'm aware of what Judge Koppe's concerns
16 were, which led her to a detention order, but those concerns
17 have substantially changed in the meantime.

18 Specifically, her concern was with the access that
19 Mr. Barlow would have had to the cryptocurrency, which made him
20 a flight risk.

21 And as part of the ongoing negotiations with the
22 government, Mr. Barlow has turned all of that cryptocurrency
23 over to the government, so he no longer has access to any of
24 that.

25 In addition, there was some concern about his ability to

1 obtain or possible possession of a fake identification, and I
2 believe the government's investigation has laid that to rest as
3 well.

4 And I think, most importantly, now that he has pled, I
5 don't think the government opposes his release, which would
6 assist our defense in preparing for sentencing, both in the
7 arguments and the -- more importantly, I think, for the Court,
8 is the forfeiture issue, and him having access to computers and
9 to my office would greatly assist in laying that issue to rest
10 with finality.

11 So for those reasons we would ask that he be released on
12 his recognizance, Your Honor.

13 THE COURT: Thank you, Mr. Mishler.

14 Mr. Hunter, any response?

15 MR. HUNTER: Just briefly, Your Honor.

16 It's true at the time that Mr. Barlow was arrested the
17 United States, you know, was attempting to preserve the status
18 quo in terms of any assets that could be moved, any risk of
19 flight that might have been posed by Mr. Barlow at that time,
20 and any obstructive activity that could have taken place.

21 All of those concerns have been alleviated over the last
22 few months.

23 I've worked with Mr. Mishler almost as closely as I've
24 ever worked with any attorney. I'm satisfied that the things
25 that concerned me in April are no longer of issue, and I don't

1 oppose the defendant's release under the conditions recommended
2 by Pretrial and the Court.

3 THE COURT: With regard to the cryptocurrency, looking
4 at the Superseding Information as well as the plea agreement,
5 it's pretty detailed, and so at least the cryptocurrency that
6 the government has been able to identify that kind of created
7 the earlier risk, that has been turned over; is that right?

8 MR. HUNTER: That is correct, Your Honor. Everything
9 that I think can be recovered is in the possession of the
10 United States.

11 THE COURT: Okay. All right. Thank you, Mr. Hunter.

12 So I will say, based on the arguments and discussion
13 just now, and I did talk with our Pretrial Services officer
14 earlier today, I do find that there are conditions of release
15 for Mr. Barlow that I can impose that would reasonably assure
16 the safety of the community and also would assure his
17 appearance at future court proceedings.

18 So, Mr. Barlow, I'm going to order you released on your
19 own recognizance in this case.

20 I am told that, by doing this now, you should be out by
21 the end of the day, so we'll get the process moving.

22 However, before we get there, I do have to advise you of
23 several things.

24 So by releasing you on your own recognizance, you don't
25 have to post any money or property as a bond, but there are

1 things you do have to do and some things you are not going to
2 be allowed to do while this case is pending, and I have to
3 explain those things to you.

4 So, first, let me tell you about those release
5 conditions -- if I can with my broken glasses.

6 So let's go through them. First, you must not violate
7 any federal, state, or local law while you are on release.

8 Second, you must report immediately to the Pretrial
9 Services every and any contact with law enforcement personnel,
10 including arrests, questioning, or traffic stops.

11 And I like to point out that that includes if you get
12 pulled over for speeding; tell your Pretrial Services Officer.

13 Any interactions you have with law enforcement, you need
14 to let him or her know.

15 You must cooperate in the collection of a DNA sample if
16 the collection is authorized by law.

17 You must immediately advise the Court and your defense
18 counsel in writing before making any change of residence or
19 telephone number.

20 And you must appear in court as required and must
21 surrender as directed to serve any sentence that is imposed.

22 In addition to those requirements, you are going to have
23 to submit to supervision and report for supervision to the
24 Pretrial Services Office in Las Vegas, Nevada. So that will be
25 handled with an officer in Las Vegas.

1 You must continue or actively seek employment. You must
2 surrender any passport that you have to the Pretrial Services
3 Office in Las Vegas, Nevada, and not obtain another passport or
4 other international travel document.

5 You must abide by the restrictions on personal
6 association, residence, or travel. And specifically, you are
7 going to have to reside at an address approved by Pretrial and
8 restrict your travel to Nevada and the Southern District of
9 Ohio only, and so really -- really the only reason to come to
10 Ohio will be for court purposes.

11 Avoid all contact directly or indirectly with any person
12 who is or may become a victim or potential witness in the
13 investigation or prosecution of this case.

14 And that's for -- and that includes all co-defendants.
15 I know that your brother is obviously a co-defendant, and I
16 just -- he just pled, as you likely know, a few moments ago,
17 and you can obviously talk with your brother.

18 However, to the extent you talk with your brother, you
19 cannot talk about this case. Don't talk about anything related
20 to the case. All right?

21 Also, you shall not use or unlawfully possess a narcotic
22 drug or controlled substance unless prescribed by a licensed
23 medical practitioner.

24 You are going to be required to test for prohibited
25 substances if required by the Pretrial Services Office or the

1 supervising officer. That testing may be used with random
2 frequency and may include urine testing, the wearing of a sweat
3 patch, a remote alcohol testing system, and/or any form of
4 prohibited substance screening or testing.

5 You must not obstruct, attempt to obstruct, or tamper in
6 any fashion with the efficiency and accuracy of any
7 prohibited -- of any prohibited substance screening or testing.

8 You also may be required to participate in a program of
9 inpatient or outpatient substance abuse therapy and counseling
10 if directed by the Pretrial Services Office or supervising
11 officer.

12 Do you understand these are all your release conditions,
13 Mr. Barlow? Do you have any questions about any of them?

14 THE DEFENDANT: I have no questions, Your Honor.

15 THE COURT: Okay. And, Mr. Mishler, do you have a
16 question?

17 MR. MISHLER: I just wanted to clarify one issue, Your
18 Honor. I think it's Condition 9, Section I, where it limits
19 him to Nevada and the Southern District of Ohio.

20 THE COURT: Yes.

21 MR. MISHLER: I would just ask for an exception as
22 well. He has a lot of family in Utah. My understanding is
23 that after his release he will be traveling to Utah to spend
24 Thanksgiving with family.

25 So if we could add Utah as an allowed state as well or

1 at least for the purposes of the holidays, that would be
2 greatly appreciated.

3 THE DEFENDANT: In addition, I do have a vehicle to
4 pick up that is in Colorado. That would be one trip only.

5 If that's not allowed, I can figure out someone else to
6 pick it up for me. It would be more convenient if I didn't
7 have to hire someone.

8 THE COURT: Here's what I will do. I will allow you
9 to go to Utah for Thanksgiving. To the extent that you need to
10 pick up a car or the Christmas holidays are coming up, you are
11 going to need to get permission in context, so at that point we
12 know exactly what you are requesting and can really look at it
13 in context.

14 I don't want to start making a lot of exceptions before
15 we even get the rule in place.

16 So, like I said, I know we're two days, three days
17 before Thanksgiving, so I will allow an exception to go to Utah
18 for Thanksgiving.

19 But after the Thanksgiving holiday, by Sunday evening, I
20 expect you to be in Nevada at your residence that we have the
21 address for.

22 And to the extent you have other things you think you
23 need to leave Nevada for, you can talk with your Pretrial
24 Services Officer. All right?

25 THE DEFENDANT: I appreciate it, Your Honor.

1 THE COURT: Okay. I will say, for the holidays, I've
2 seen it done both ways, where the attorney asks for kind of the
3 exception to the Pretrial Services' conditions. So either one
4 way or the other, you could file something and say, okay, it's
5 Christmas, here's what he wants to do, but I want -- when that
6 happens, I want to know kind of the context, the days, so I've
7 got context for approving that.

8 So any other questions then about the release
9 conditions?

10 MR. MISHLER: No, Your Honor. Thank you.

11 THE COURT: Okay. So then the final thing I do need
12 to advise you on, Mr. Barlow, is what happens if you don't
13 comply with these conditions.

14 First, if you violate any of these conditions, you may
15 be subject to stricter conditions. For example, you or someone
16 else could be asked to put up bond, or you could also have your
17 travel restricted, or you could be put under house arrest in a
18 worst-case scenario. If you do not comply with your bond
19 conditions, you could spend the rest of your pretrial period in
20 jail.

21 Also, you need to be aware these conditions are going to
22 be in a court order. So what that means is, if you violate any
23 of the conditions, you would be in contempt of court. And
24 because that is a criminal matter, you could get a jail term or
25 fine or both if you are convicted of contempt of court.

1 The other issue is, if you don't make all of your court
2 appearances, the government can charge you with another crime,
3 the crime of failure to appear. Somebody convicted of that
4 crime, the crime of failure to appear, could get a jail term, a
5 fine, or both.

6 Finally, if you commit any type of crime while you are
7 out on bond in this case, you could get two sentences for that.
8 The one sentence would be for the crime -- the sentence that
9 the crime usually carries -- and then the second would be for
10 committing a crime while on bond.

11 So the second sentence can be for up to ten years for a
12 felony and one year for a misdemeanor.

13 Do you have any questions about that information?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Okay. So as I said, this is a court
16 order. The bond order is a court order. And I'll put it on as
17 soon as we get off the bench here so that we can start to get
18 you processed.

19 There is a place for you to sign the bond order. But
20 since we're doing this remotely, do you authorize my courtroom
21 deputy to sign the form on your behalf?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Okay. So what we'll do is Ms. Bragg will
24 sign it. She will get it filed. We will get a copy of the
25 order to Mr. Mishler. He will get a copy to you.

1 Once you get it, I've read to you all of the terms, but
2 I am asking you to read it yourself as soon as you get it so
3 that you are familiar with the terms and the limitations.

4 And like I said, at least for now, the only exception on
5 the residency requirements and travel requirement is I will
6 allow you to go to Utah for Thanksgiving, but you need to be
7 home in Nevada by, you know, Sunday evening at 9:00 Nevada
8 time. All right?

9 THE DEFENDANT: Agreed.

10 THE COURT: Okay. Any questions on that?

11 THE DEFENDANT: No questions.

12 THE COURT: Okay. So then the next step, Mr. Barlow,
13 is your attorney will also be talking to you about getting --
14 meeting with the probation department so that presentence
15 report can be prepared.

16 Is there anything further on behalf of Mr. Barlow,
17 Mr. Mishler?

18 MR. MISHLER: No, Your Honor. Thank you.

19 THE COURT: Okay. Thank you.

20 Anything further on behalf of the government,
21 Mr. Hunter?

22 MR. HUNTER: No, Your Honor. Thank you.

23 THE COURT: All right. Thank you, counsel. Thank
24 you. Thank you, Mr. Barlow, for your time and your questions
25 today.

1 And like I said, there's lots of rules for the pretrial
2 release. It will be good practice for supervised release, and
3 I'll see you at your sentencing. Thank you. Court will be
4 adjourned.

5 (Proceedings concluded at 4:18 p.m.)

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7 C E R T I F I C A T E

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9 I, Allison A. Kimmel, do hereby certify that the
10 foregoing is a true and correct transcript of the proceedings
11 before the Honorable Sarah D. Morrison, Judge, in the United
12 States District Court, Southern District of Ohio, Eastern
13 Division, on the date indicated, reported by me in shorthand
14 and transcribed by me or under my supervision.

15
16
17 s/Allison A. Kimmel

18 Allison A. Kimmel, FAPR, RDR, CRR, CRC
19 Official Federal Court Reporter
20 April 17, 2023
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